

Message Text

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E.O. 11652: N/A
TAGS: PINS, PINT, SHUM, SF
SUBJECT: SOUTH AFRICAN COURT DECISION ON PRESS FREEDOM

1. SUMMARY: IN A DECISION WHICH MAY HAVE PROFOUND EFFECTS
ON FREEDOM OF THE PRESS IN SOUTH AFRICA, THE TRANSVAAL DIVISION
OF THE SUPREME COURT IN PRETORIA LAST WEEK UPHELD A RETRO-
ACTIVE LOWER COURT CONVICTION OF A STUDENT EDITOR FOR PUBLISHING
MATERIAL SUBSEQUENTLY CONSIDERED UNDESIRABLE. THE EFFECT OF
THIS WILL BE THAT ANY EDITOR CAN BE PROSECUTED FOR HAVING
PUBLISHED BANNED MATERIAL, EVEN THOUGH IT WAS NOT BANNED AT THE
TIME OF PUBLICATION. COURT DECISION IS TO BE APPEALED.
END SUMMARY.

2. THE SUPREME COURT IN PRETORIA LAST WEEK UPHELD LAST
NOVEMBER'S LOWER COURT CONVICTION OF STUDENT EDITOR SEAN
MORONEY ON CHARGES OF PUBLISHING
UNDESIRABLE MATERIAL. THIS WAS THE FIRST CASE OF ITS
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KIND IN THAT THE MATERIAL IN QUESTION HAD NOT BEEN
DECLARED UNDESIRABLE OR BANNED AT THE TIME THAT IT
WAS PUBLISHED. THE CASE INVOLVED TWO ISSUES OF "WITS
STUDENT," THE MAGAZINE OF THE UNIVERSITY OF THE
WITWATERSRAND, PUBLISHED IN AUGUST 1975 WHILE MORONEY
WAS EDITOR, AND BANNED A MONTH LATER BY THE PUBLICATION
CONTROL BOARD. MORE THAN A YEAR PASSED BEFORE MORONEY

WAS CHARGED WITH HAVING PRODUCED AN UNDESIRABLE PUBLICATION. THE ORIGINAL MAGISTRATE AND THE SUPREME COURT JUDGE AGREED THAT THEY COULD NOT RULE ON THE DESIRABILITY OF THE MATERIAL IN QUESTION BUT WERE BOUND BY THE DECISION OF THE STATE-APPOINTED PUBLICATION CONTROL BOARD. THEY FURTHER ARGUED THAT MORONEY'S GUILT WAS NOT AFFECTED BY THE FACT THAT THE MATERIAL IN QUESTION WAS NOT BANNED AT THE TIME OF ITS PUBLICATION. MORONEY TOLD AN EMBOFF THAT HE WILL APPEAL TO THE COURT OF APPEALS, A PROCESS WHICH COULD TAKE ABOUT A YEAR. (UNDER THE SOUTH AFRICAN LEGAL SYSTEM, CASES OF THIS TYPE ARE FIRST HEARD IN A MAGISTRATE'S COURT, THEN CAN BE APPEALED TO THE PROVINCIAL DIVISION OF THE SUPREME COURT, IN THIS CASE IN PRETORIA, AND FINALLY TO SOUTH AFRICA'S HIGHEST COURT, THE COURT OF APPEALS IN BLOEMFONTEIN.) IF HIS CONVICTION IS UPHELD, MORONEY FACES A MAXIMUM FINE OF R500 OR 40 DAYS IN PRISON. PENALTIES FOR SUBSEQUENT CONVICTIONS ARE STEEPER, RANGING FROM A MINIMUM OF R500 (SECOND OFFENSE) OR R1000 (THIRD OFFENSE) TO A MAXIMUM OF R5000. SUBSEQUENT CONVICTIONS, CAN NOW RESULT FROM OTHER PUBLICATIONS WHICH INITIALLY APPEARED LONG AGO AND WERE SUBSEQUENTLY DECLARED UNDESIRABLE.

3. THE COURT DECISION HAS BROUGHT A DISMAYED REACTION FROM CONCERNED LAWYERS AND EDITORS. THE FORMER ARE CONCERNED BOTH AT THE RETROACTIVE ASPECT INVOLVED LIMITED OFFICIAL USE

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IN THE DECISION AND AT THE JUDGE'S UNWILLINGNESS TO CONSIDER THE QUESTION OF THE MATERIAL'S ACTUAL DESIRABILITY. ONE LAWYER WAS QUOTED IN THE PRESS AS SAYING THAT THIS INABILITY TO APPEAL A PUBLICATION CONTROL BOARD DECISION, COMBINED WITH THE RETROACTIVE ASPECT, LEAVES AN ACCUSED WITH NO MEANS OF DEFENSE. EDITORS AND PUBLISHERS WILL NOW BE FORCED TO TRY AND ANTICIPATE THE DECISIONS OF THE PUBLICATION CONTROL BOARD AND IMPOSE SELF-CENSORSHIP. THE RETROACTIVE ASPECT ALSO MEANS THAT ANY PERSON OR ORGANIZATION WHICH HAS HAD ANY OF ITS PUBLICATIONS BANNED AT ANY TIME IN THE PAST (INCLUDING VIRTUALLY EVERY LIBERAL ORGANIZATION IN SOUTH AFRICA) IS NOW IN DANGER OF PROSECUTION.

4. SOUTH AFRICAN GOVERNMENT ATTORNEYS HAD ALREADY BEGUN PROSECUTIONS IN OTHER CASES BEFORE THE SUPREME COURT ANNOUNCED ITS DECISION IN THE MORONEY CASE, AND HAD OBTAINED THE CONVICTION IN CAPE TOWN MAGISTRATE'S COURT OF REV. DAVID RUSSELL FOR PRODUCING AN UNDESIRABLE PUBLICATION. PROSECUTORS HAVE INITIATED OTHER CASES. CHARGES HAVE BEEN BROUGHT AGAINST THE UNION OF BLACK JOURNALISTS IN CONNECTION WITH A PUBLICATION BANNED LAST

JUNE, AND AGAINST DOME, THE STUDENT NEWSPAPER OF THE
UNIVERSITY OF DURBAN.

5. COMMENT: UNLESS THE COURT OF APPEALS REVERSES THE
DECISION OF THE SUPREME COURT, AND IN ANY EVENT FOR THE
NEXT SEVERAL MONTHS, THE MORONEY DECISION WILL REPRESENT
A FURTHER SERIOUS BLOW TO PRESS FREEDOM IN SOUTH AFRICA.
THE MORONEY DECISION GREATLY STRENGTHENS THE ALREADY
STRONG INCENTIVE FOR SELF CENSORSHIP ON THE PART OF
PUBLISHERS AND EDITORS IN SOUTH AFRICA. THOSE WHO DO
NOT FALL INTO LINE TO THE SATISFACTION OF THE SAG WILL
BE UNDER THREAT OF PROSECUTION IF ANY OF THEIR PUBLICATIONS
HAVE BEEN BANNED IN THE PAST OR ARE BANNED IN THE FUTURE.

BOWDLER

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